IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3669 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAREN ADVERTISING AND MARKETING

Versus

BANK OF INDIA

Appearance:

1. Special Civil Application No. 3669 of 2003

MR AMAR N BHATT for Petitioner No. 1-3

MR SANDEEP N BHATT for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

SERVED BY AFFIX.-(R) for Respondent No. 4-6

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 18/09/2003

ORAL JUDGEMENT

The petitioners are aggrieved by an order dated 20.12.2002 passed by the Judge, City Civil Court No. 17, Ahmedabad, in Civil Suit No.1699/90. By virtue of the impugned order, the Registry of the City Civil Court has been directed to transfer the said suit to the Debts Recovery Tribunal, Ahmedabad, after following proper procedure.

2. I have heard learned advocate Shri Amar Bhatt appearing for the petitioners and learned advocate Shri Sandeep Bhatt appearing for respondent No. 1 Bank. Other respondents, though served, have not appeared.

3. The grievance, which the petitioners have ventilated in the petition, is that the suit, which was filed by the petitioners in the City Civil Court, ought not to have been transferred to the Debts Recovery Tribunal, Ahmedabad. According to the case of the petitioners, by forging signature of petitioner No. 3, respondent No. 2 had taken away substantial amount of the petitioners from the accout maintained by respondent No. 1 bank and, therefore, the suit had been filed by the petitioners for recovery of the amount from the bank as well as respondent No. 2 and other concerned parties.

4. It has been submitted by learned advocate Shri Amar Bhatt appearing for the petitioners that the said suit should not have been transferred to the Debts Recovery Tribunal because the Tribunal has no jurisdiction to entertain such a suit. He has submitted that according to sec. 17 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the Act'), 'the Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.'

5. It is the case of the petitioners that the suit had not been filed by any bank or financial institution for recovery of debts due, but the suit had been filed by a partnership firm and its partners for the purpose of recovery of amount from their employees and respondent No. 1 Bank. It has been further submitted by him that the suit had not been filed for recovery of any "debt". He has drawn my attention to sec. 2(g) of the Act, which defines "debt" as under :

""debt" means any liability (inclusive of

interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable on, the date of the application."

6. Thus, it has been submitted that the suit, which had been filed in the City Civil Court, was not for recovery of any debt, and the said suit was also not filed by a bank or financial institution, but, as stated hereinabove, that was with regard to recovery of the amount, which the plaintiffs had to recover from their employees and the bank.

7. Looking to the aforestated undisputed position, in my opinion, the City Civil Court ought not to have transferred the suit to the Debts Recovery Tribunal. It appears that the trial court materially erred when it treated the suit as a counter claim. As a matter of fact, if one looks at sec. 19(8) of the Act, it is very clear that for the purpose of having a counter claim, there must be an application. In the instant case, no application has been filed by any bank or any financial institution and as there is no application, there cannot be any question of filing any counter claim in the said application.

8. Learned advocate Shri Sandeep Bhatt appearing for respondent No. 1 Bank has tried to support the order passed by the City Civil Court.

9. Looking to the fact that the suit had neither been filed by any bank or financial institution for the purpose of recovery of its debt, the suit of such a nature could not have been filed before the Debts Recovery Tribunal. In the circumstances, in my opinion, it was not open to the City Civil Court to transfer the suit to the Debts Recovery Tribunal.

10. The impugned order is, therefore, quashed and set aside and the City Civil Court is directed to proceed further with the suit from the stage at which it was disposed of by transferring the same to the Debts Recovery Tribunal. If, in pursuance of the order, the

suit has already been transferred to the Debts Recovery Tribunal, it shall be re-transferred to the City Civil Court, by the Debts Recovery Tribunal.

The petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

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